



time to eat lunch. Around 2:30 to 3:00 in the afternoon, claimant started back to the shop in Atchison, again hauling the air screed. Along the direct route back, claimant stopped at a parking lot of McDonald's where he intended to check the load and get a bite of lunch at the nearby Taco Bell. He used the McDonald's parking lot because it had more room for parking his truck. As he jumped out of the truck, he heard a pop in his knee. He then walked toward Taco Bell and stepped in snow in the median. As he stepped in the snow, his knee twisted or separated and he experienced a sudden onset of severe pain.

Respondent first argues that claimant did not suffer personal injury arising out of and in the course of his employment. Respondent cites definitions of personal injury found in K.S.A. 44-508(c). Activities of daily living are there excluded from the definition of injury. Respondent also cites several appellate court decisions, most particularly *Martin v. U.S.D.* No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980). In that case, evidence indicated the claimant's preexisting condition resulted in injury as he stepped from a truck.

The Board concludes that the evidence does establish a personal injury by accident. Claimant has a history of prior problems, but the evidence suggests the prior problems were aggravated by the event of jumping down, apparently approximately two feet, from the truck and by the twisting incident in the snow. When the injury is from a combination of the preexisting condition and from a hazard of the employment, the injury should be treated as compensable.

Respondent also argues that the injury did not arise out of employment because claimant was engaged in a personal activity, not part of his employment. Again, the Board concludes the evidence shows the injury arose out of and in the course of employment. The timing and circumstances of claimant eating lunch were for the benefit of the employer. He exited the truck in part to check the load. The evidence also indicates he would have been on the clock at the time the injury occurred. For these reasons, the Board concludes the injury arose out of and in the course of employment.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Steven J. Howard on March 3, 1999, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1999.

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BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS  
M. Joan Klosterman, Kansas City, MO  
Steven J. Howard, Administrative Law Judge

**MICHAEL WHEELER**

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**DOCKET NO. 241,477**

Philip S. Harness, Director